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Amy M. Manetta

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JACK SCHWARTZ & ASSOCIATES  
1350 BROADWAY, SUITE 1510  
NEW YORK, NY 10018

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* AMY M. MANETTA

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Appeal 2008-0807  
Application 09/805,970<sup>1</sup>  
Technology Center 2100

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Decided: August 29, 2008

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*Before:* LANCE LEONARD BARRY, JEAN R. HOMERE and  
JAY P. LUCAS, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

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<sup>1</sup> Application filed March 14, 2001. Appellant claims the benefit under 35 U.S.C. § 119 of provisional application 60/248,087, filed 11/13/00. The real party in interest is Draeger Medical Systems, Inc.

Appellant appeals from a final rejection of claims 1, 2, 4-13 and 15 to 22 under authority of 35 U.S.C. § 134. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b). Claims 3 and 14 are cancelled; claims 23 to 27 are withdrawn.

Appellant's invention relates to a system and method for prioritizing and displaying medical information concerning a patient on a ventilator. In the words of the Appellant:

In addition, the present inventors recognize the desirability of a user being able to gather, process and display data remotely from a ventilator at any location and to use commonly available computing equipment, through for example, a local area network and/or a wide area network, such as the internet. Also, it is desirable for a device to be able to process and display not only the ventilator data from a particular ventilator, but also from other medical devices such as an anesthesia system or another ventilator on the same network.

Therefore, an internet compatible system and method are presented for displaying medical information derived from a plurality of sources. Ventilation unit parameters and/or setting associated with a patient are acquired on a substantially periodic basis and in response to a user command. The received ventilation unit parameters and or settings are prioritized for display in a desired order. An attribute is allocated to distinguish newly acquired ventilation unit parameters and/or setting that have changed from older ventilation unit parameters and settings.  
(Specification, p. 2, middle)

Claim 1 is exemplary:

1. An internet compatible system for displaying medical information derived from a plurality of sources, comprising:

a communication network for acquiring ventilator parameters and settings associated with a patient on a substantially periodic basis and in response to a user command;

a device for prioritizing received ventilator parameters and settings for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings; and

a display generator for initiating generation of data representing a display of prioritized ventilator parameters and settings in the desired order and attributes for distinguishing the changed ventilator parameters and settings.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Shulman	US 2001/0030664 A1	Oct. 18, 2001
Reuss	US 6,406,426 B1	Jun. 18, 2002

#### REJECTIONS

R1: Claims 1 and 12 stand rejected under 35 U.S.C. § 102(e) for being anticipated by Reuss.

R2: Claims 2, 4 to 11, 13, and 15 to 22 stand rejected under 35 U.S.C. 103(a) for being obvious over Reuss in view of Shulman.

Appellant contends that the claimed subject matter is not anticipated by Reuss, or rendered obvious by Reuss in combination with Shulman, for failure of the references to disclose key claimed limitations. The Examiner contends that each of the claims is properly rejected.

Rather than repeat the arguments of Appellant or the Examiner, we refer to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this opinion. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

We affirm.

#### ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. §§ 102(e) and 103(a). The issue under the ‘102(e) rejection turns on whether Reuss teaches the claimed device for prioritizing ventilator parameters for display in a desired order. The issue under the ‘103 rejection is whether that limitation, as well as all other argued limitations, are taught or suggested by Reuss and Shulman.

#### FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellant has invented a system and method for displaying medical information, as from a ventilator attached to a patient, onto a remote display device connected by a wireless or wired network. (Spec., p. 2; Figure 1). The invention includes a device for prioritizing that ventilator information for display, and the ability to alter an attribute (e.g. color) of the information when the information has newly changed. (Id.)
2. The patent Reuss teaches a Medical Monitoring and Alert System in which various medical devices attached to a patient, including a ventilator (col. 7, l. 33) send signals through a wired or wireless communication network to a remote station for display and monitoring (col. 9, l. 34). The remote station includes a computer with a display device, or a PDA with a text/graphical display. (Col. 9, l. 28+). An alert

system monitors the data, and can accentuate when the data is beyond the normal (alarm condition, col. 8, line 9) by an audible or visual alert. (Col. 13, l. 52).

#### PRINCIPLES OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. See *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

"It is common sense that familiar items may have obvious uses beyond their primary purposes, and a person of ordinary skill often will be able to fit the teachings of multiple patents together like pieces of a puzzle." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1732 (2007).

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citation omitted).

*Avantis Pharma Deutschland GmbH v. Lupin, Ltd.*, 499 F.3d 1293 (Fed. Cir. 2007); *Ormco Corp. v. Align Tech., Inc.*, 498 F.3d 1307, 1319-20 (Fed. Cir. 2007) (law of the case that a dependent claim was obvious means the parent claim must also have been obvious); *In re Muchmore*, 433 F.2d 824, 824-25 (CCPA 1970) ("Since we agree with the board's conclusion of

obviousness as to these narrow claims, the broader claims must likewise be obvious.").

References within the statutory terms of 35 U.S.C. § 103 qualify as prior art for an obviousness determination only when analogous to the claimed invention. *In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992). Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986); see also *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979) and *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). ). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

With regard to the issue of whether it is obvious to use a more modern technology in substitution for an older one, we take guidance from the recent *Leapfrog Enterprises, Inc v. Fisher Price, Inc. and Mattel, Inc.*:

“Thus we bear in mind that the goal of the clam 25 device was to allow a child to press a switch associated with a single letter in a word and hear the sound of the letter as it is used in that word. . . .

Accommodating a prior art mechanical device that accomplishes that goal to modern electronics would have been reasonably obvious to one of ordinary skill in designing children's learning devices. Applying modern electronics to older mechanical devices has been commonplace in recent years." *Leapfrog Enterprises, Inc v. Fisher Price, Inc. and Mattel, Inc*, 485 F.3d 1157, 1162, (Fed. Cir. 2007).

#### ANALYSIS

From our review of the administrative record, we find that the Examiner has presented a prima facie case for the rejections of Appellant's claims under 35 U.S.C. §§ 102 and 103. The prima facie case is presented on pages 3 to 6 of the Examiner's Answer. In opposition, Appellant presents a number of arguments.

#### *Arguments with respect to the rejection of claims 1 and 12 under 35 U.S.C. § 102(e)[R1]*

Appellant first argues with respect to claim 1 that "Reuss neither discloses nor suggest 'a device for prioritizing received ventilator parameters **and settings** for display in a desired order and for allocating an attribute to distinguish changed ventilator parameters and settings' as presented in the claimed invention." (Br., p. 8, middle).

Reviewing the Reuss reference with respect to claim 1, we note that most of the claimed subject matter is found in the references. (See FF#2, above). However, we agree with the Appellant that the specific limitation of prioritizing the parameters and settings for display is not distinctly taught by Reuss. For that teaching in Reuss, the Examiner relies on column 15, lines 1 to 10. However, as Appellant has pointed out in the Brief (p. 8, bottom),



that section of the patent describes the message memory maintenance function, in which older messages, or those with less priority, in the remote access devices are deleted to make room for more messages to be sent. We decline to read that teaching as prioritizing received ventilator parameters and settings for display.

As claim 12 contains a method limitation that parallels the system limitation quoted above, we find that both claims are not properly rejected under 102(e), which requires that all of the claimed limitations be present in a single prior art reference. See *Perricone v. Medicis Pharm. Corp.* (cited above).

We will thus not sustain the rejection R1.

*Arguments with respect to the rejection of  
claims[1], 2, 4-11,[12], 13, and 15 to 22 under 35 U.S.C. § 103(a)[R2]*

As the Examiner has rejected all of the dependent claims for being obvious over Reuss and Shulman, it is evident that the broader independent claims 1 and 12 must also be subjected to the same rejection. (See *Avantis Pharma Deutschland GmbH v. Lupin, Ltd., Ormco Corp. v. Align Tech., Inc.* and *In re Muchmore*, (all cited above).) We therefore treat them as being part of the rejection R2.

Appellant contends that the Examiner erred in rejecting claims 2, 4-11, 13, and 15 to 22 under 35 U.S.C. § 103(a). We have reviewed the limitations of claims 1 and 12, and found the Reuss reference teaches most of the claimed limitations. (See FF#1 and FF#2 above, and the Examiner's discussion of the Reuss reference, Ex. Ans., page 6 to 7.)

In our review, we found that Reuss taught a display device for displaying ventilator parameters and settings- FF#2, but did not find therein a solid teaching of a device for prioritizing the parameters and setting for display. We also found that Reuss taught allocating an attribute (visual and audio alarms – col 13, l. 52) when the parameters changed to beyond a set alarm limit, but did not teach changing the color of the information on the display.

The Examiner has cited Shulman for teaching changing the color of the information on a display responsive to the severity of the deviation from normal. (Shulman, ¶ 52; Ex. Ans., p. 7, bottom). We agree with the Examiner that it would be obvious to employ this teaching with those of Reuss to render obvious a change of the color of displayed information when ventilation parameters and settings vary from previous norms.

We also find in Shulman a teaching of the device (and method) for prioritizing received information for display in a desired order. In Shulman, users select which information will be indicated on a screen by an icon. (¶¶ 49, 50). As the users vary their selection, the order of information will change: school closings may be ordered just next to church news, or have bake sale information interposed. We combine this teaching of prioritizing the information for display with the teachings in Reuss of displaying the ventilator parameters and settings to render the claims 1 and 12 obvious over the combination of references. (See *KSR Int'l Co. v. Teleflex, Inc.*, cited above).

Appellant argues that dependent claim 2 was erroneously rejected, as “Shulman (with Reuss) neither discloses nor suggest utilizing a different color to distinguish a changed “ventilator parameters and settings”. (Br., p. 19, top). As mentioned above, we find that the teachings in Shulman of the claimed color changes may be combined with the teachings of displaying ventilator parameter in Reuss. The teachings are properly combinable as they both address the problem of alerting the user to a change in data by a change in the attribute of a displayed data element. See *In re Clay* (cited above). The combination would render claim 2 obvious.

Appellant argues, with respect to claims 4 and 5 that the references fail to teach or suggest the display be in a window on a screen (claim 4) of an Internet browser (claim 5). (Br., p. 20, 21). In Shulman we find a teaching that the data be displayed in an Internet Browser (§ 52). An Internet browser is an obvious modernization of the technology of Reuss. See *Leapfrog Enterprises, Inc v. Fisher Price, Inc. and Mattel* (cited above).

Appellant argues, with respect to claim 9, that neither reference discloses nor suggests a filtered list of information, as claimed. (Br., p. 21, bottom). In view of the selection mechanisms for information disclosed in Shulman (§§ 49, 50) and Reuss (col. 13, ll. 3 to 14) we find this limitation evident in the prior art.

Appellant argues with respect to claim 10 that the combination of references neither disclose nor suggest selection of a set of values for the data. (Br., p. 22, top). In view of Reuss’s teachings of selection of alarm values and alarm limit variations (col. 13, l. 52) we cannot agree with this argument.

Appellant's arguments with respect to the method claims dependent on claim 12 are parallel to those discussed above with respect to the system claims, and are likewise not convincing.

#### CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner erred in rejecting claims 1 and 12 under 35 U.S.C. § 102(e). Based on the same findings and analysis, we do not find error in the rejection of claims 1, 2, 4 to 13 and 15 to 22 under 35 U.S.C. § 103(a).

#### DECISION

We reverse the Examiner's rejection of claims 1 and 12 as being anticipated by Reuss. We affirm the Examiner's rejection of claims 1, 2, 4 to 13 and 15 to 22 as being unpatentable over the combination of Reuss and Shulman.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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JACK SCHWARTZ & ASSOCIATES  
1350 BROADWAY, SUITE 1510  
NEW YORK NY 10018